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SEC

SERVICE DATE - NOVEMBER 20, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42060

NORTH AMERICA FREIGHT CAR ASSOCIATION — PROTEST AND  
PETITION FOR INVESTIGATION — TARIFF PUBLICATIONS OF THE  
BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

STB Docket No. 42061

RAILWAY PROGRESS INSTITUTE COMMITTEE ON TANK CARS  
PETITION FOR INVESTIGATION AND PROTEST PURSUANT TO EX PARTE NO. 328

STB Docket No. 42062

THE CHLORINE INSTITUTE, INC. — PROTEST AND  
PETITION FOR INVESTIGATION — TARIFF PUBLICATIONS OF  
UNION PACIFIC RAILROAD COMPANY

STB Docket No. 42063

RAILWAY PROGRESS INSTITUTE COMMITTEE ON TANK CARS  
PETITION FOR INVESTIGATION AND PROTEST PURSUANT TO EX PARTE NO. 328

STB Docket No. 42064

E. I. DUPONT DE NEMOURS AND COMPANY —  
PROTEST AND PETITION FOR INVESTIGATION

Decided: November 19, 2001

In a joint motion filed November 5, 2001 (Joint Motion), the North American Freight Car Association, The National Industrial Transportation League, The Chlorine Institute, Inc., the Railway Progress Institute Committee on Tank Cars, E.I. du Pont de Nemours and Company, the U.S. Clay Producers Traffic Association, Inc. (collectively, Protestants), The Burlington Northern and Santa Fe Railway Company (BNSF), and the Union Pacific Railroad Company (UP) request that the Board hold in abeyance for 45 days the decision in these proceedings that was served on October 18, 2001 (October 18 decision). In that decision, the Board ordered that these proceedings be put on hold while parties and interested individuals and organizations

negotiate concerning the storage and diversion issues raised relating to the 1986 Agreement prescribed in Investigation of Tank Car Systems, 3 I.C.C.2d 196 (1986) (Ex Parte No. 328). The parties were directed to give the Board a written report on the progress of the negotiations by January 16, 2002.

Joint petitioners, who are parties or intervenors in these proceedings, seek to hold the October 18 decision in abeyance for 45 days to determine whether they can amicably resolve the issues in this proceeding without reopening the 1986 Agreement for negotiations. Joint petitioners state that they will report to the Board if a resolution does not appear possible.

On November 6, 2001, Protestants (the parties in the joint motion except BNSF and UP) filed a letter contending that the October 18 decision interprets the pleadings of Protestants as requests under Ex Parte No. 328 for renegotiation of a part of the tank car mileage allowance system. Protestants assert that they did not request renegotiations and the October 18 decision did not properly apply the provisions of Ex Parte No. 328. Protestants argue that they would normally have sought clarification or reconsideration of the October 18 decision within 20 days after service, but are willing to forgo seeking such relief at this time to pursue negotiations pursuant to the Joint Motion provided that any order holding the December 18 decision in abeyance for 45 days also extends the time period for seeking reconsideration or clarification. Protestants also request that, if the Joint Motion is denied, the deadline for filing petitions for reconsideration or clarification be extended until 20 days after the date of any decision denying the Joint Motion.

The requests made in the November 5 and November 6 filings will be granted. No one has objected to the request to hold the October 18 decision in abeyance or to the request to extend the deadline for seeking reconsideration or clarification, and both requests appear to be reasonable.

This action will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The October 18 decision will be held in abeyance for a period of 45 days from the date of service of this decision (until January 4, 2002). Parties shall inform the Board if they cannot reach a resolution.
2. The time for filing petitions for reconsideration or clarification is extended to 20 days after the end of the negotiations contemplated in the Joint Motion.

3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary